

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,

Plaintiff,

vs.

No. C05-05434 MJJ

NATIONAL RAILROAD PASSENGER
CORPORATION, dba AMTRAK;
JOE DEELY,

Defendants.

CERTIFIED
COPY

Deposition of
MARK CARL SCHULTHIES

March 22, 2007

Reported by:

MERRY C. GESNER

CSR No. 8819, RMR

Job No. 56091

EXHIBIT C

1 BE IT REMEMBERED That on Thursday, March 22,
2 2007, commencing at the hour of 10:48 a.m., at 801 K
3 Street, Suite 2300, Sacramento, California, before me,
4 Merry C. Gesner, a Certified Shorthand Reporter in the
5 State of California, personally appeared

6 MARK CARL SCHULTHIES,
7 a witness called by the Defendants National Railroad
8 Passenger Corporation in the above-entitled action,
9 who, having been duly sworn by the Certified Shorthand
10 Reporter to tell the truth, the whole truth, and
11 nothing but the truth, testified under oath as follows:

12 --o0o--

13 EXAMINATION BY MR. JONES

14
15 Q Good morning, Mr. Schulthies. Even though
16 we've been chatting this morning, I just want to for
17 the record introduce myself.

18 My name is James Jones, and I'm the attorney
19 representing Amtrak in this case. It's the case of
20 John Earl Campbell vs. National Railroad Passenger
21 Corporation, doing business as Amtrak.

22 Could you please for the record state your
23 full name and spell your last?

24 A Mark Carl Schulthies, S-C-H-U-L-T-H-I-E-S.

25 Q Okay. What I'd like to do to begin is to run

1 long time, but, you know, the railroad's full of
2 rumors.

3 Q Okay.

4 A And I heard that he had gotten terminated,
5 and there was some suspicious circumstances involved.
6 I have no firsthand knowledge of those circumstances.

7 Q Okay. Now, while you were employed with
8 Amtrak, is it correct that you were Mr. Campbell's
9 supervisor?

10 A Yes.

11 Q And can you tell me during what period of
12 time you recall actually supervising Mr. Campbell?

13 A From the start of his employment -- I can't
14 remember what year that was -- until 2001.

15 Q Okay. And what was your start date with --
16 with Amtrak?

17 A Two six ninety-two.

18 Q Okay. Do you remember an incident in or
19 around September of 1999 where Mr. Campbell sent an
20 e-mail -- and I believe it was to you -- where he was
21 accusing a gentleman by the name of Mike Chappel of
22 racism?

23 A Yes.

24 Q Can you tell me what you recall from that
25 incident?

1 instigating, and at the railroad, there's lots of --
2 and it's the human condition -- there's a lot of people
3 that like to, you know, throw gas on the fire, and
4 there's instigation.

5 And I didn't -- you know, I got enough real
6 problems, I don't need to make problems where there
7 aren't any, so I resisted that tendency.

8 Q Okay. So you never heard anything of real
9 substance that you --

10 A No actionable. Nothing actionable.

11 Q Okay. Do you ever remember any other
12 incidents occurring where Mr. Campbell came to you and
13 brought to your attention that he believed someone was
14 treating him improperly based upon his race?

15 A Yes.

16 Q Okay. Can you -- and were there several, or
17 was it just one?

18 A It was several.

19 Q Okay.

20 A And it was mainly the mechanical department.
21 He -- he had a problem with just about everybody in the
22 mechanical department, because I recall -- and I don't
23 recall specifics -- but just about every morning that
24 John would work, the mechanical department -- Lou
25 Bellotti was the facility manager at the time, so it

1 had to emanate from him -- him or one of his
2 representatives would complain about John in the
3 morning when I came to work, and then I would have to
4 go and find out what happened.

5 And I -- I don't remember all the
6 specifics --

7 Q Sure.

8 A -- but how it wound up was, is, I did this
9 many, many times. They would complain about John,
10 repeatedly, and I would find out that John was -- it
11 was make-believe, or there was some other motivation,
12 or it wasn't -- essentially untrue.

13 So I put the mechanical department on notice
14 that I was not going to listen to these repeatedly
15 frivolous complaints about John unless there was
16 something substantive, and to knock it off.

17 Because every morning I'd come to work, and
18 they'd have some little nit-picky thing to complain
19 about John, and when I investigated -- I had several
20 employees like this, black, white, all -- you know,
21 either -- you know. People that they just singled out
22 to dislike, so they would just make frivolous comments
23 about, and just -- you know.

24 Anyway, my experience with John was, is, he
25 told the truth. He was confrontational when --

1 especially when it dealt with safety, and I never found
2 John to be on the wrong side.

3 I usually would always have to side, after I
4 got the facts and separated the facts from all the
5 other stuff, that he was essentially right, and I -- I,
6 as his supervisor, trusted his judgment and trusted his
7 decisions, because I wasn't there at night, but I could
8 pretty much rely that he was going to tell me the
9 truth. Whether it was good or bad, he would always
10 tell me the truth.

11 Q Okay. I want to ask you a little bit of
12 follow-up on the mechanical department.

13 In addition to Mr. Bellotti, do you remember
14 who the other people were who would make complaints
15 about Mr. Campbell?

16 A Mike Fabian. Mike Bordenay. Jerry -- I
17 can't remember Jerry's last name. I worked with him
18 for years, too.

19 Q Anything remarkable about them that, you
20 know, you can recall, so we can perhaps identify them?
21 In other words, if he's six foot eight, or if he's, you
22 know, some --

23 A Yeah, he's huge.

24 Q Okay.

25 A Jerry's huge. He's about a three-hundred-

1 fifty-pound man.

2 Q That probably narrows it down a little.

3 A You know, I can't remember his last name. I
4 don't know why it escapes me.

5 Q Any particular position he held?

6 A Yeah. He was the general foreman.

7 Q Okay.

8 A All those guys were general foreman.

9 Q All right. Anyone else besides Mike Fabian
10 and, I think --

11 A Mike Bordenay. I don't know how to spell his
12 name.

13 Q Okay. Anyone else?

14 A That's the principals.

15 Q Okay. Now, I know -- I know I'm trying to
16 get you to dredge up memories from a while ago, but can
17 you remember ever getting any complaint from Lou
18 Bellotti himself, where it became evident to you that
19 Lou's complaint was based somehow on Mr. Campbell's
20 race?

21 A Yes.

22 Q What do you recall?

23 A Well, I had lots of trouble with Lou. As --
24 he was mechanical, and I was transportation, and he had
25 a different set of priorities than the transportation

1 people did, and we had to work together to get the
2 trains out on time. That was our common mission.

3 And he liked to point to areas of blame.
4 He'd blame it on -- he would like to assign blame,
5 which would absolve him from trouble. I think that's
6 common with human beings. He would try to blame others
7 for different things.

8 And he liked to kind of, like -- well, in --
9 and it's -- it was the plantation mentality. He -- you
10 know, he kind of acted like he was the lord and master,
11 and everybody beneath him wasn't as competent, and
12 wasn't as good as him and his managers.

13 And then this was prevalent with the
14 mechanical department, and that the people -- and they
15 were generally African Americans -- weren't somehow as
16 intelligent, or -- and they had to be -- they -- when
17 they were left to themselves, they couldn't make their
18 own decisions. They made poor decisions in these white
19 foremen's absence.

20 And I found that offensive, because I didn't
21 have that problem. For example --

22 And then the conflict between Lou and John
23 was, is, at night, John Campbell was the foreman. John
24 Campbell was my representative. You know. He was in
25 charge as far as the transportation department was, and

1 he called the shots. I trusted John, you know, after a
2 period of time.

3 John is physically big, and he is an African
4 American. Didn't make any difference to me. He was
5 good.

6 And Lou's attitude towards his own employees
7 would transfer into my -- the people that worked with
8 me in my department, and he just had real trouble --
9 Lou always had trouble with John making decisions.

10 And that's what we paid him for, is, John was
11 very competent. He could make the decisions.

12 And then the trouble between Lou and I was, I
13 would always support John's positions, and he would try
14 to get me to undermine John. That was the dynamic that
15 I recall.

16 Q Okay. I want to try to zero in on a couple
17 of comments you made, and then -- and then look back to
18 Mr. Bellotti.

19 You made a comment that this attitude that
20 existed in the mechanical department, that -- that
21 others didn't do their jobs as well, was prevalent, and
22 what I'm wondering is, aside from Mr. Campbell, was
23 there anyone else who you thought had become sort of a
24 focus of this blame that was coming from the mechanical
25 department?

1 A Sure.

2 Q Who else were they targeting, do you think?

3 A They targeted the African American
4 electricians.

5 Q Can you give me any particular names?

6 A No. See, they worked for a different
7 department, but -- and then the coach cleaners were
8 predominantly African American, and, you know, they
9 were always faulting the coach cleaners for not doing a
10 good enough job. Mechanical. And -- You know.

11 And that's the -- that's the -- the
12 population down in Oakland, it's mostly African
13 American, that's the people that live there, and so
14 most of the people that work there, you know, I'd say
15 about sixty percent, maybe seventy percent, were black.

16 And so the predominant work force in Oakland
17 is black, but they don't hold any positions of
18 authority. They were never allowed to hold any
19 positions of authority.

20 And John, the problem I had with John is that
21 John was in a position where he really had some, you
22 know, authority at night, and I would support him,
23 because -- you know, and it didn't have anything to do
24 with his race. He was just good, just like anybody.
25 You know, he was good.

1 And so they didn't -- that -- that was not --
2 and it came down from the top -- came down from our
3 division superintendent. He had the same attitudes
4 towards, you know, women and black people and Mexican
5 people, and -- you know, that somehow that there was
6 in -- you know, they were all right as workers, but as
7 bosses, they weren't good bosses.

8 Q Now, you mentioned that was the division
9 superintendent?

10 A Yeah.

11 Q And who was that?

12 A Joe Deely.

13 Q Okay. All right. I don't want to cut you
14 off. I do want to know what -- you know, what you
15 know, so from what I'm understanding, the mechanical
16 department focused its -- its blaming on electricians,
17 coach cleaners, John Campbell. Any -- anyone else that
18 you can recall?

19 A Well, you know, that -- or any Union Pacific
20 Railroad, because they were the contractors for the
21 locomotives, and that was the easy one to blame,
22 because they didn't work for Amtrak. They were a
23 contractor --

24 Q Okay.

25 A -- and, you know, they were generally used as

1 mechanical department people make comments about the
2 car men?

3 A The car men are part of the mechanical
4 department, and yes, they would.

5 Q Okay. And with respect to the people who
6 worked in the commissary, was it predominantly an
7 African American work force?

8 A Yes.

9 Q And with respect to the car men, were they
10 predominantly an African American work force?

11 A That, and Hispanic.

12 Q Okay. And then what about the makeup of the
13 mechanical department itself? Was it largely
14 Caucasian? Was it largely African American? What was,
15 their make-up?

16 A The bosses were all white, and the workers
17 were African American and/or Hispanic, with a few
18 females scattered in.

19 Q Okay. Now, when you say the bosses were
20 white, who were the bosses?

21 A Lou Bellotti, Mike Fabian, Mike Bordenay,
22 Jerry -- you know.

23 Q The big man?

24 A You know, anybody -- anybody not in the union
25 was -- was white and male.

1 Q Okay. Then, when you mentioned that you
2 would commonly hear complaints from the mechanical
3 department about Mr. Campbell, would the complaints
4 come from others who included those of African American
5 race?

6 A No.

7 Q Okay. So the complaints came from the people
8 that you're referring to as the bosses?

9 A That's right.

10 Q Okay. So now if -- if I focus my attention
11 on the people who were making complaints that you
12 believe are in part related to Mr. Campbell's race,
13 would the list be Mr. Chappel, who we've already talked
14 about, Mr. Bellotti, Mr. Fabian, Mr. Bordenay, and this
15 gentleman by the name of Jerry?

16 A Yes.

17 Q Okay. And what about Joe Deely? Did you
18 ever hear Joe Deely ever make any comments at all about
19 Mr. Campbell that you felt were --

20 A Yes.

21 Q -- they were race related?

22 A Yes.

23 MR. JONES: Let me -- I'm not -- I -- caution
24 may be the wrong word, but let's be mindful of the fact
25 that you're talking about something that I completely

1 understand is an emotional subject, and I think you've
2 got information that you feel like you need to share
3 with us, but what's happening is, you're predicting
4 where my questions are going, and you're answering
5 before I even finish.

6 MR. MOORE: I don't think so. I object to
7 that comment. The witness is doing quite well in his
8 answers.

9 MR. JONES: Well, I'm not objecting to his
10 answers.

11 I'm just saying, if you could do your best to
12 let me finish my questions before you begin to answer,
13 and if you do jump the gun, we'll just -- you know,
14 it's no big deal, we'll just restate the question. I
15 just don't want you to have to cover ground twice. All
16 right?

17 THE WITNESS: Okay.

18 Q (By Mr. Jones) So, Mr. Deely, let's go
19 back to Mr. Deely. You made a comment that you heard
20 Mr. Deely make statements that in some way related to
21 race when he was talking about Mr. Campbell; is that
22 right?

23 A Yes.

24 Q Can you tell me what you remember?

25 A I remember a conference call, it was via the

1 phone, where Mr. Bellotti was complaining about things
2 that happened at night. Specifically -- and I can't
3 remember you know, the detail -- but the person he was
4 complaining about was John Campbell.

5 Mr. Deely wanted to hear my side of it,
6 because I was responsible for John Campbell. I forget
7 what I said specific with -- you know, whatever --
8 whatever Lou said, but I remember the one thing that
9 Joe said that I got upset with, is, Joe said, after I
10 had finished talking, "Mark, you understand that it's
11 your responsibility to keep him, John Campbell, in his
12 place."

13 To which I kind of jumped and said, "What
14 place is that, Joe?"

15 And he says, "You know."

16 And I said, "No. I would like you to tell
17 me. What place? Because obviously, we don't
18 understand one another."

19 And he says, "I'm not going to spell it out.
20 Everybody down there understands what I'm saying."

21 And I said, "I'm sorry, but I don't
22 understand."

23 But he never did answer me directly.

24 But you understand -- the feeling was, is
25 that I was supposed to squash him or something. I

1 don't know.

2 Q Okay. Are there any other comments you
3 recall from Mr. Deely that were, you know, in your mind
4 similar to that?

5 A Yes.

6 Q Can you tell me what they were?

7 A People not knowing their place was a common
8 theme. He said that many times. And predominantly
9 when it involved African American or female employees.
10 That people didn't know their place, and it was my job
11 to put them in their place. I think that's about as
12 explicit as he got.

13 Q Okay. And -- and these other comments about
14 people not knowing their place were directed at
15 employees other than Mr. Campbell?

16 A Yes.

17 Q Okay. Do you remember anyone in
18 particular --

19 A Yes.

20 Q -- who it may have been directed at?

21 A Yes.

22 Q Who was it?

23 A Cynthia Hubbard.

24 Q Okay. Is Ms. Hubbard African American?

25 A She's part. I think. I think she's Puerto

1 Rican. I don't really know.

2 Q Okay. Who else?

3 A That's the one that -- that's the only one
4 that really stands out in my mind.

5 Q Okay. Going back to the phone conference
6 where Mr. Deely made a comment about John Campbell not
7 knowing his place, do you remember what incident it was
8 that led to that phone conference?

9 A Not -- well, not specifically. I think it
10 involved something with -- with, John had decided to
11 make a move in a certain sequence, and there was some
12 cars on the E clean, and John had made a decision to do
13 them not the way Lou or his representative wanted him
14 to do, because it -- it required a triple or double
15 handling; and then Lou tried to excuse the reason why a
16 train didn't get out on time because John made it --
17 that John wanted to consolidate those switches, making
18 a double move for them.

19 And again, I don't remember the specifics,
20 but I had to -- I had to defend John, because he --
21 actually, that was the right call to make. It was more
22 efficient, and it was better, and it was safer than
23 what mechan --

24 And mechanical, they have a different -- they
25 have a different set of priorities than transportation.

1 They only look at fixing them and checking things off
2 their list, whereas our job was to get the trains out
3 on time, and so that would often conflict.

4 And John's job was to get the trains out on
5 time, and to work with mechanical and make sure that
6 that happened; and there was always a conflict, because
7 they wanted him to do things the way they wanted him to
8 do things, that weren't necessarily in the best
9 interests of Amtrak; and unlike a lot of people, John
10 would bring it to their attention, and would not back
11 down to any kind of pressure or any kind of
12 intimidation.

13 And John would constantly keep me informed,
14 which helped me manage, and helped me deal with Lou
15 Bellotti when there was problems, and helped me deal
16 with Joe Deely to give him accurate information;
17 because a lot -- you know, people, when they mess up,
18 they don't really want you to know what actually
19 happened.

20 And this would help me do my job better,
21 and keep us in the clear; you know, keep everything
22 straight so that we could address the real problem
23 instead of personalities.

24 Q Okay. The conference call with you, Joe
25 Deely, and Mr. Bellotti, was there anyone else on the

1 call?

2 A I don't know. Probably there was. We had a
3 conference call, I think it was at seven thirty or
4 eight -- the times changed -- but it was a daily
5 occurrence. It was a daily conference call, where we
6 went over performance.

7 Q Okay. Would there be any way to pin down in
8 time, either exactly or with an estimate, when that
9 conference call occurred?

10 A Well, it was before Joe got -- Joe left the
11 first time. It was before Joe left -- and I don't know
12 what year that was. I know that he left -- oh, I don't
13 know. It was before Joe left the first time.

14 Q Okay. And that's Joe Deely; correct?

15 A Yeah.

16 Q Okay.

17 A He got fired or quit. I don't remember
18 which. There was stories that he got fired, but he
19 left.

20 And it was before he left the first time,
21 because, when he came back the second time, I was
22 already back as an engineer. I had already resigned
23 and went back as an engineer.

24 Q Okay. What about the period of time when
25 you were receiving complaints from the mechanics about

1 able to tell -- John wanted to make sure that I had
2 both sides of the story so I could defend him, which
3 I -- you know, I found myself almost always doing.

4 Not just because of a -- you know, we weren't
5 personal friends then or anything, just on the merits
6 of what was going on.

7 I just, after a period of time, time after
8 time I find that this guy's been telling the truth, and
9 I'm getting stories, I just quit listening to these
10 other people.

11 Q Okay. Now, when John came and complained to
12 you about Lou Bellotti and the other folks from the
13 mechanical department, did he ever make complaints that
14 they had made racial statements?

15 A Yes.

16 Q Okay. What do you recall in that regard?

17 A They had never called him the N-word. I know
18 it wasn't really overt.

19 But they would say things like "Boy," or,
20 "You don't know your place," or, "You people."
21 Subtle.

22 And John would -- it would upset John, these
23 commentaries. You know. This --

24 And then he'd hear -- you know, and he would
25 ask me, you know, specifically, you know, what's going

1 on, and I would have to say I don't know, you know,
2 specifically, because I really didn't know what was in
3 their head.

4 And anyway -- and then he asked me
5 specifically, I think, on several occasions, you know,
6 what regard I held him in. You know. You know. If he
7 was doing a good job, or did he have a problem with --
8 did I have a problem with him.

9 And he -- I remember one time he asked me,
10 you know, "Is it because I'm so big?" Because he's a
11 big man, and I'm not little either.

12 He says, "I'm big, and I'm black, and I --
13 you know, some people tend to be intimidated. Do you
14 find me intimidating?" And I had to tell him no, you
15 know, I didn't.

16 But I told him that somebody could. You
17 know. I'm not -- you know, but I told him, I said,
18 "John, I don't find you that way."

19 Because he was worried and concerned that
20 he -- maybe something he was doing was wrong, and I --
21 and I had to tell him no, I didn't really feel that
22 anything he was doing was wrong, he was just being
23 himself.

24 He wasn't abrasive or physically threatening
25 in any way, although he wouldn't take any -- you know,

1 he wouldn't be submissive when he was in the right. He
2 would not kowtow to anybody.

3 Q Okay. Now, you mentioned some statements
4 that were, you know, charged statements: The word
5 "Boy," the term, "You people," the term, "You don't
6 know your place."

7 Do you remember anything at all about who it
8 was that Mr. Campbell specifically identified making
9 those statements?

10 A Yes. It was the two Mikes, predominantly.
11 Mike Fabian and Mike Bordenay.

12 Q Okay.

13 A I don't remember -- I just remember the
14 frequency from them was really high.

15 And I had -- I had gone to Lou a couple of
16 times, and I -- and Lou was not sympathetic to what I
17 was saying, and in fact he shut me down and dismissed
18 me, and I thought he was part of it, so I never really
19 addressed him.

20 But it was the two Mikes that were really
21 overt about it.

22 Q Okay. Can you distinguish in any way what
23 Mike Fabian may have said from what Mike Bordenay may
24 have said?

25 A You know, in my mind, you know, like, I refer

1 to them as the two Mikes. They were one and the same.
2 I mean, these two guys were just about on par with each
3 other, with the number of problems they presented.

4 Q Okay.

5 A And they always had interpersonal relation
6 problems with people.

7 Q Did you -- did you ever talk with Mike Fabian
8 or Mike Bordenay?

9 A Daily.

10 Q About the personal problems?

11 A Daily.

12 Q And do you remember any -- any response?

13 Let's start with Mike Fabian. Can you remember any
14 conversation you had with Mike Fabian in particular,
15 over the fact that you felt he was treating people in
16 the workplace inappropriately?

17 A Well, I remember it was Fabian who told me
18 that I didn't understand, and I asked him why I didn't
19 understand.

20 He said, "You don't work with these people
21 day after day after day like I do."

22 I said, "What do you mean, these people?"

23 He says, "Well, my work force is black. It's
24 all black, and you got to treat them different than you
25 treat your employees."

1 I said, "Well, fifty percent of my employees
2 are black, too. I don't understand what you're
3 saying."

4 He said, "Well, almost a hundred percent of
5 my employees are black, and," he says, "there's a
6 certain way you got to get performances out of these
7 people, and they don't have the same motivation."

8 And I said, "What are you talking about,
9 Mike?" You know. And he -- you know, he told me I did
10 not understand.

11 And that was -- and that was a common theme,
12 that I -- you know, I couldn't understand because I
13 wasn't dealing with African Americans all the time.

14 And I probably had -- maybe a third to a half
15 of the transportation employees were black, and really
16 there was no difference in what motivated one human
17 being over another human being. Everybody wanted to be
18 treated with respect. Everybody wanted --

19 I didn't really see their point, and I would
20 argue with them at length over how they treated their
21 people, and I didn't like how they treated their
22 people, but I certainly didn't want them treating my
23 people, the people I was in charge of, in the same
24 manner. I took high exception.

25 And it was a daily thing. It was an ongoing

1 dispute or conflict between myself and the mechanical
2 department about their tactics and their treatment of
3 fellow employees.

4 Q Okay. That was Mike Fabian; right?

5 A Fabian.

6 Q Right. What about Mike Bordenay?

7 A Same difference.

8 Q Can you -- can you recall any particular
9 conversation that you had with him where the subject of
10 race came up --

11 A Yes.

12 Q -- in some way?

13 What do you remember?

14 A He said -- and this is -- this is Bordenay.
15 Bordenay one day tried to convince me that black people
16 weren't as smart as white people, and they weren't
17 capable, and I should always -- you know, I shouldn't
18 always take the side of the employee; that I should
19 give him some credit for knowing how people work.
20 Which, you know, I couldn't do and I wouldn't do, and
21 it made me mad.

22 And in John's situation, you know -- and this
23 is -- this is my understanding -- the problem I could
24 see was that, the problem with John was, John was
25 highly competent, very intelligent; in fact, I would

1 say he was more gifted than the average person, and he
2 was very smart, and he could outthink. That's why he
3 was always the foreman. He was very good at how to do
4 things.

5 And he would make these guys look stupid all
6 the time, and they resented it. They very much
7 resented John being so intelligent.

8 And then they resented me after I would hear
9 the facts of the situation, support John based on the
10 fact that it was a better decision; and they felt that,
11 you know, I was out of touch. I wasn't on the same
12 team they were.

13 Q Okay. Anything else in particular that you
14 can recall Mike Fabian -- go back to Mike Fabian, make
15 sure we've exhausted that -- anything else in
16 particular you can recall Mike Fabian saying that
17 suggested to you that he was racially biased?

18 A Not specific.

19 Q How about Mike Bordenay?

20 A Just the intelligence thing.

21 Q Okay. How about Jerry? We haven't covered
22 the gentleman by the name of Jerry.

23 A Jerry. Gosh, and I just about had his name.
24 The last name.

25 He was from the south, and he was a southern

1 boy, transplanted to the West Coast, and I -- and I
2 lived in Kentucky for a little while, and I've
3 traveled, and I understand, and I've seen it my own
4 self that us in California, the people in California,
5 especially Northern California, have a whole different
6 attitude than the deep south -- and I'm talking about
7 Caucasian people -- and he had more of the southern
8 prejudices and biases. You know.

9 And I was raised -- I was raised here in
10 Northern California with this set of values and this
11 kind of a political and social system, whereas he was
12 raised that blacks lived on one set of the tracks, you
13 know, and whites lived on the other, and he didn't --
14 he had a hard time all the time reconciling how we
15 lived here on the West Coast, and how it really didn't
16 matter, you know, and how money was -- or there was no
17 social strata, and he was all the time making comments
18 about that.

19 Q Let me stop you for a second, because the
20 tail end of your answer, I think, begins to actually
21 give me at least part of what I'm about to explore with
22 you.

23 You made comments about Jerry and his
24 upbringing and his attitudes. What was it that you
25 actually saw Jerry do or heard Jerry say that led you

1 to draw these conclusions about him?

2 A Well, he'd say -- he'd make leading
3 statements. You know, "Growing up" -- and I forget
4 what place -- he said, "We never would allow something
5 like this to happen"; or, you know, "To my way of
6 thinking, or the way I was raised, you know, we would
7 have never allowed this, we would never allow this";
8 and, "How do these people think that they can talk to
9 us like this," and, you know, things like that.

10 Q Can you give me any more specifics that would
11 lead you to conclude that those were racially based
12 statements?

13 A Specifics?

14 Q Yeah.

15 A No.

16 Q Anything at all?

17 A No.

18 Q Okay. I mean, for instance, can you think of
19 an incident that occurred that led him to make a
20 statement such as, "We never would have let these
21 people do that?"

22 A Yes.

23 Q Okay.

24 A And I'm thinking about John Campbell.

25 John would speak right up, and Jerry one time

1 said, "He doesn't wait until he's invited to speak,"
2 which, John took offense to that and said, "Why do I
3 have to be invited to speak?"

4 And Jerry said, "Well, we didn't do that, you
5 know, where I come from," or he made a comment -- he
6 prefaced it by saying, "Where we come from, you know,
7 you're only allowed to speak if you're invited to
8 speak."

9 And that -- to me, that was just -- I
10 remember that because it was -- just, like, kind of
11 blew my mind. You know, it's -- it's like talking to a
12 child. You know. Or something like that.

13 And here was a grown man, and he was the one
14 that was actually doing the work, and he -- and my --
15 in my mind, he was the one that really needed to say
16 something, because he's the one that actually did it.
17 He didn't need his actions -- and he needed to tell us
18 what was going on, instead of being invited.

19 And he -- he wasn't shy at all. John was not
20 shy. I don't say he was offensive. He was -- he would
21 tell you right now, you know, whether it was good or
22 bad, whether you liked it or not, he would tell you
23 actually what happened.

24 Q Okay. Can you think of any other -- and I'll
25 do this from time to time. I don't mean to be trying

1 to badger you, that's not what I'm trying to do; just,
2 when I leave the deposition today, I want to know that
3 I've gotten what you know out of it.

4 Any other incidents or statements that you
5 can recall in the workplace that you thought -- that
6 you observed someone doing something that was racially
7 biased?

8 A In terms of what?

9 Q Anything. I mean, you've talked today about
10 how the mechanical department would make racially
11 biased statements about the car men, about the coach
12 cleaners, the electricians, Mr. Campbell, people that
13 work in the commissary.

14 You've talked about Jerry and his attitudes,
15 Mike Bordenay, Mike Fabian, Lou Bellotti, Joe Deely,
16 and all of those, I think, were connected by a common
17 theme, that there was something racially motivated in
18 the statements or the events.

19 Can you think of anything else that
20 demonstrated in your mind any kind of racial bias?

21 A Yes, something just popped into my mind.

22 Q Okay.

23 A I was in the office, and I -- I shared the
24 office with a guy by the name of Tom Oughton.

25 O-U-G-H-T-O-N. He was also a service manager.

1 And John had made application for engine
2 service, to become an engineer, and we were holding
3 interviews, and it was our job to get these interviews
4 lined up, and to prescreen applicants for engine
5 service.

6 And I distinctly remember Tom telling me that
7 he did not want John Campbell to be an engineer, and I
8 queried him why, because I felt that he was -- you
9 know.

10 And he said he wasn't intelligent enough,
11 and he said that he didn't know his place, and he was
12 not going to reward an uppity nigger with a better job.
13 Period.

14 And me and him had a big fight over that. A
15 big fight.

16 Q Okay. Now, those are -- those are some
17 pretty bad words.

18 A Yes.

19 Q That's something you have a real specific
20 recollection of?

21 A Yeah. Because it was so outrageous.

22 Q Okay. Now, tell me a little bit about
23 Mr. Oughton. What was his position?

24 A He was a service manager at Oakland.

25 Q Okay.

1 A Had been, a year before I got there.

2 Q Okay. And what was his role in the promotion
3 process? Other than the prescreening of the
4 applicants, what was his role?

5 A His role was to sit on the interview, and
6 when we would have engine service interviews, a
7 representative from the union is usually invited; a
8 human relations, or human -- HRD, which is personnel,
9 would sit in; and a supervisor, myself or him, or
10 somebody that was involved in engine service.

11 And we would ask a series of questions,
12 interview, and then we would take a vote, and out of --
13 and we'd score the applicants, and if there was ten
14 positions, we'd talk -- we'd take the top ten
15 applicants by score.

16 So what Tom was going to do was throw John's
17 application in the garbage, and he did so in front of
18 me. I pulled it out of the garbage, said, "That's not
19 right. Put it back in the pile." I took it out, and
20 that's when we had that conversation.

21 Because I did not -- you know, he had done
22 this, and I just -- you know, I just -- he threw his --
23 his application in the garbage, and I said, "What are
24 you doing?"

25 And that's -- that's when our conversation

1 came up.

2 Q Tell me -- tell me -- so -- in a sense, you
3 know, the rest of the story on that. I would imagine
4 the interview process continues on, and what I'm
5 wondering is, what was Mr. Oughton's role from that
6 point forward? Did he interview Mr. Campbell?

7 A Yes.

8 Q Tell me how the story develops.

9 A How the story developed after that incident,
10 after Tom and I had our confrontation, he got advance
11 knowledge of when the interviews were going to be held,
12 and instead of letting me know, so I could be in the
13 interview, he kept that information to himself, and I
14 did not get an opportunity to interview John as the
15 supervisor. He interviewed him, and I didn't know it
16 until after it was all over.

17 And then it came to my knowledge, because
18 John -- John wanted to know if he made it or he was
19 selected or not, and I told him I did not know. I
20 didn't even know he was going to be interviewed.

21 He said, "Yeah, I had my interview with Tom
22 Oughton," et cetera, et cetera, and so forth, you know;
23 and -- and I think it was Rich Edson from the union,
24 and I forget the lady's name that was from the
25 personnel department.

1 And I said, "Oh, I didn't know about it," and
2 I asked John, I said, "Well, how do you think it went?"

3 He said, "It wasn't very good."

4 And then I told him -- I told him that, "You
5 know, Tom doesn't like you." I didn't tell him
6 specifics, I didn't tell John specifics, but I said,
7 "You know, John, he doesn't like you."

8 He goes, well, he got that feeling, he says,
9 "but I don't know why." This was John talking. He
10 said, "I don't know why, Mark. What's he got against
11 me?"

12 And I said, "Well, he's got issues." And I
13 wasn't very specific. You know.

14 And he had issues with other people of
15 African American descent. Tom did. And women. And,
16 you know, he had all kinds of problems.

17 He was eventually let go. He took a transfer
18 instead of getting fired, is what happened. They let
19 him go to San Antonio, Texas, and then he wanted to
20 come back and they wouldn't let him come back, so he
21 essentially was eliminated.

22 Q Okay. In settings like the one you
23 described, the interview that you described, were you
24 normally part of the interviewing team?

25 A Yes.

1 the primary person.

2 Q Now, can you -- this particular interview
3 that you're talking about with Mr. Campbell, can you
4 place it in time for me?

5 A No. I really can't. I think it was maybe
6 1999 or ninety-eight. Something in there. It was
7 early on.

8 Q Okay.

9 A Very early on.

10 And the reason I -- you know, the other --
11 back to the thing that I -- just came to my mind, is,
12 you know, I wouldn't tell John specifics, because in
13 personnel matters you do not talk about what happened
14 in the interview process, because there's -- you know,
15 that's a personnel issue, and so I wasn't at liberty to
16 discuss things with him.

17 But I do know, now that you're asking me
18 under oath what happened, I'm telling you.

19 Q Sure. I understand.

20 Do you know, at that point in time, was --
21 was there a rule in place where you had to be on the
22 job for at least a year in order to get promoted to the
23 engineer's position?

24 A That rule was quite frequently waived at that
25 time, because we were so -- it was waived many times,

1 because we had a lot of younger employees and a lot of
2 older employees, and the older employees would not take
3 promotion, so there was some outstanding candidates
4 that had less than a year that were selected, and it
5 was taken as a case-by-case basis.

6 And I remember talking to John and asking him
7 specifically if he was going to put in, because I felt
8 that he -- he was outstanding in his job already.

9 And another conflict that we had was, those
10 people that were outstanding yard conductors or so
11 forth, there was a tendency to leave them where they
12 were, and not -- and not promote them, because they
13 were skilled at what they were doing already, and they
14 didn't want to displace that.

15 And I thought at the time -- I know better
16 now, but I thought at the time that's why they didn't
17 pick John, because he was such a good foreman that they
18 wanted to leave him where he was; and now I'm
19 convinced, you know, with my confrontation with Tom and
20 with how John had been treated after I'd left, that
21 maybe there was something else going on. That's just
22 my supposition.

23 Q Okay. You mentioned the fact that the one-
24 year rule had been waived frequently. Can you remember
25 any particular employees for whom it was waived?

1 A Tony Onisko.

2 Q Can you spell the last name?

3 A O-N-I-S-K-O. He was one of the outstanding
4 people.

5 Q Okay.

6 A And I just thought of him immediately,
7 because he was the most outstanding. I mean, real
8 spectacular person.

9 As an aside, though, he also, when he was a
10 foreman, he also had the same type of problem with
11 mechanical that John did, and the same type of
12 confrontation.

13 Q Was Mr. Onisko African American?

14 A No.

15 Q Any ethnic group that Mr. Onisko identified
16 with, to your knowledge?

17 A No.

18 Q Caucasian?

19 A Caucasian.

20 Q Okay.

21 A Very outspoken.

22 Q Okay. Anyone else for whom the one-year rule
23 was waived, that you can recall?

24 A I don't have any specifics off the top of my
25 head. Just the biggest one, I can remember.

1 American candidates at the time?

2 A No. I don't remember that. I don't recall
3 that.

4 Q Okay. Did you become involved in any way,
5 after you learned that you had been excluded from the
6 interview process, to try to get Mr. Campbell's
7 application back on track?

8 A Sure.

9 Q What did you do?

10 A I talked to my boss, Jay Commer, about it.

11 Q And spell the last name, please.

12 A C-O-M-M-E-R.

13 Q First name is Jay?

14 A Yeah, Jay. J-A-Y.

15 Q Okay.

16 A And his advice to me, which pretty much
17 closed the door, he said, "Let sleeping dogs lie."

18 Q Okay. Were there ever any other
19 conversations you had with Mr. Commer about that
20 subject after that time?

21 A Yes.

22 Q What was it?

23 A He cautioned me many times, "You do not want
24 to open the race -- the race box." And I said -- you
25 know. And that meant like Pandora's box. He says,

1 "You want to keep a lid on that as tight as possible."

2 Which, is meaning to me, which, the way I
3 understood it, was -- was not to -- not to bring these
4 problems up to him, because he didn't want to hear it.
5 He didn't want to know anything about it, and if he
6 didn't know anything about it, he wouldn't be
7 responsible for anything. That's how he dealt with the
8 problem.

9 Q Okay. So I just want to make sure I got the
10 reporting relationship from that period of time in
11 place. Mr. Commer supervised you?

12 A Yes.

13 Q And you supervised Mr. Campbell?

14 A Yes.

15 MR. JONES: Okay.

16 (A recess was taken at 12:18
17 p.m.; the deposition continued
18 at 12:32 p.m.)

19 MR. JONES: We're back on the record, and I'm
20 going to have Exhibit No. 1 marked.

21 (Exhibit 1 was marked.)

22 Q (By Mr. Jones) Mr. Schulthies, I'm going to
23 just hand you now what's been marked as Exhibit No. 1
24 to your deposition. I just want to have you take a
25 look at the face page of Exhibit No. 1, and tell me if

1 you recognize that as the subpoena that you received
2 that required your presence here this morning.

3 A Yes, it is.

4 Q Okay. And then, if you turn to the second
5 page, do you see there's a deposition notice?

6 A Yes.

7 Q Is that a document you've seen?

8 A Yes.

9 Q Okay. And do you remember about when it was
10 when you got the deposition notice?

11 A About a month ago.

12 Q Okay. All right. That's all. Nothing more
13 with Exhibit 1.

14 Now, just before we took a little break, you
15 had made a comment about a statement that was made by
16 your supervisor, where he had stated that, in his view,
17 you shouldn't take the lid off of the race box. Do you
18 recall that?

19 A Yes.

20 Q Do you remember any further conversation
21 about that with him, or -- or did he make that comment,
22 and then that was the end of the conversation?

23 A No. He -- I brought it up several more
24 times, and each time I brought it up, the more adamant
25 he got that he did not want to talk about race. He

1 didn't want to hear any complaints about it, and it was
2 my job to make it go away.

3 Q Do you remember any particular incident that
4 occurred that led you to go back to your supervisor to
5 bring this subject up again?

6 A Yes.

7 Q What was it?

8 A An engineer, his name was Richard Barrow, a
9 black engineer, passed away, and we loved him. I loved
10 him, Jay loved him. He was like family.

11 And shortly after that happened, after the
12 funeral and everything, you know, I kind of pressed Jay
13 to make some of this racial stuff -- because of our
14 mutual feeling about Richard, and about how we felt
15 about him and what kind of a good guy he was, that we
16 could maybe address the race. You know, I was trying
17 to capitalize on that feeling with him to get him to,
18 you know, open it up again.

19 And he really -- he got mad at me, and asked
20 me -- well, commanded me never to bring race up again
21 in his presence.

22 Q Okay.

23 A He said it was just too big of a problem.

24 Q Did he elaborate on that at all when he
25 commented that it was too big of a problem? Did he say

1 what he meant?

2 A Yeah. He said it would get him fired and me
3 fired.

4 Q Okay. Did you ever speak with anyone a level
5 or so higher than your direct supervisor about the
6 subject of race in the workplace?

7 A Yes.

8 Q Who was that?

9 A Joe, the next level. Joe Deely.

10 Q And that was Joe Deely. Now, have we already
11 covered the conversations you had with Joe Deely about
12 racial issues, or is this a different set of
13 circumstances that we haven't talked about?

14 A This is -- this is a different set of
15 circumstances.

16 Q Okay. Tell me what you recall discussing
17 with Joe Deely.

18 A I told him that I had talked to Jay about
19 some of the racial problems that were going on and some
20 of the conversations, not just John Campbell, but there
21 were several other things, and told him that I was
22 really upset about things.

23 And he asked me what Jay said. I told him,
24 and he said, "That's where it stops." That we didn't
25 want to open the race situation.

1 He said that -- and I didn't feel like it
2 was -- I felt it was disingenuous, but I got that
3 feeling that he sympathized with the way I felt about
4 things, but there was nothing that he would do, and it
5 was in my own self-interest to drop it.

6 Q Did -- your answer, I think, included your
7 feelings about what he was saying. Do you remember
8 specifically the words that he was using?

9 A No. He didn't really talk. He acted like he
10 didn't want to be there and have any kind of
11 conversation with me; and if you know Mr. Deely, you
12 know that he's pretty abrupt and short with people, and
13 I knew what I was suggesting was uncomfortable.

14 And he said that, "There's the way things
15 are, and not the way things we'd like to be," and as
16 much as I wanted to change the world, that this --
17 things were just the way things were, and it wasn't my
18 job to, you know, try to change the world, and to just
19 leave matters alone; and if I wanted to continue in
20 employment, that I would leave matters alone.

21 Q Was the -- now, that -- that statement, "if
22 you want to continue in employment," is that something
23 that you felt, or is that related to words that he
24 used?

25 A No, that was the specific words. He said,

1 "If you want to continue as an officer of the
2 corporation, I highly suggest that you leave this
3 alone, Mark, and drop it."

4 Q Okay.

5 A He says -- and I remember clearly -- I can
6 remember those words. And we were in the Sacramento
7 depot when he had that conversation with me.

8 Q Okay. Now, was the conversation that you had
9 with Mr. Deely, that you just related, one that also
10 followed Mr. Barrow's death?

11 A Shortly after that.

12 Q And was -- was -- was that the motivating
13 event that led you to go to speak to Mr. Deely?

14 A Well, I'd already spoke to Jay, and Jay, he
15 wouldn't talk, so the next step was to talk to Joe.

16 And I was motivated at that time talking to
17 Joe about Tom Oughton. I was really having trouble
18 with Tom Oughton. Extreme difficulty. He and I
19 were -- and it was widely known that we just fought and
20 fought and fought, and it was getting to the point
21 where I was thinking about quitting over it, and so,
22 before I made up my mind what I was going to do, I went
23 and talked to Joe.

24 Q You mentioned that you fought a lot with
25 Mr. Oughton. Over what subjects?

1 view related in some way to racial issues in the
2 workplace?

3 MR. MOORE: Objection; mischaracterizes the
4 witness's testimony. He didn't testify he had
5 confrontations with Mr. Oughton.

6 MR. JONES: You can respond if you understand
7 the question, and if you wouldn't characterize anything
8 as a confrontation, you just let me know.

9 THE WITNESS: I wouldn't say it was
10 confrontations in an aggressive sense, but we had
11 words, and I expressed myself about his attitude, the
12 way he wanted to run things. The way he treated
13 African Americans, the way he treated the women. The
14 way he treated people in general.

15 That it wasn't conducive to business,
16 primarily. It wasn't businesslike, and this wasn't a
17 personal kingdom, this was a business. And I happened
18 to love my job, and I -- you know, I wanted to, you
19 know, keep the corporation going, and that he was
20 ruining things.

21 Q (By Mr. Jones) Okay. Anything else you can
22 recall in more detail?

23 A I mentioned how he treated Cookie. That was
24 her nickname, Twilba Simpson.

25 I had another clerk, his name was Papa

1 Senaka. He was a Nigerian, from Nigeria. He was
2 educated at Oxford. He was more educated than myself
3 or Tom.

4 Where Tom tried to keep him down and not
5 allow him to do things, I would ask him to write
6 reports for me, and help me to do things that were a
7 little bit outside of his scope as the clerk, because
8 he was so much more talented and educated than I was;
9 and Tom took high exception with that. He said that
10 was improper.

11 And he didn't have very good English vocally,
12 but, you know, on paper he was --

13 And he -- he and I had a discussion about
14 keeping Papa down, because Papa wanted to transfer, and
15 wanted to, you know, be in management, and I was going
16 to help him, and Tom didn't want to help him, and
17 wanted to make sure that he wasn't promoted.

18 Q What was it in particular you recall Tom
19 saying about that?

20 A Well, it was also about him being black, but
21 the fact that he was an African, from Africa, that he
22 was a foreigner and working on a -- he wasn't a
23 citizen, and he didn't feel that -- that those jobs
24 should go to people like that.

25 And that was his -- and like that meant --

1 you know, I don't know what it meant.

2 Q Okay. Now, what I want to try to do is see
3 if I -- I'm understanding your answer, because the
4 way -- the way I'm hearing the answer, I'm left
5 wondering, are these your feelings, or are these
6 statements that are actually being made?

7 So can you remember any particular
8 statements? Just think of, you know, words coming out
9 of Oughton's mouth that you can recall, that led you to
10 believe that he wanted to keep Papa down because he was
11 an African?

12 A Yes. He said specifically -- I can just --
13 this just popped into my mind.

14 Papa liked to wear a shirt and a tie, and he
15 would wear a suit to work, and he looked very
16 professional, and I thought that was cool, even though
17 I was not a suit and tie guy.

18 And he ordered Papa not to wear a suit, not
19 to wear a tie, not to look that way, because, "You
20 people shouldn't dress like that."

21 And that's -- and Papa wanted to know what he
22 meant, and he was very upset with him.

23 He said, you know, he says -- he says, "I
24 determine the dress code here, and you will not wear a
25 shirt and tie, because that is not your station in

1 life."

2 Q Okay. Now, did you learn about that
3 statement through Papa?

4 A No. I was there for that confrontation.

5 Q Okay.

6 A And how it -- how it developed was, is that
7 Tom had went to Papa and said something to him that I
8 wasn't privy to, but then Papa got me in my office and
9 said, "Mark, you told me that it was okay and you liked
10 it. Now here's Tom telling me I can't do it. What's
11 the deal?"

12 And that's how the conversation came up where
13 I was included.

14 Q Okay.

15 A Otherwise, I -- I probably wouldn't have
16 heard about it.

17 Q Now, when you say you were included, included
18 in what sense? So then after you and Papa were
19 meeting, was there a meeting where all three --

20 A All three of us were present. Papa wanted me
21 to -- to tell Tom that I told him it was okay.

22 Q Okay. And did you do that?

23 A Sure

24 Q What was Tom's response at that point?

25 A Tom said that, "You and I don't dress like

1 A Not off the top of my head.

2 Q Okay. So we've talked about the gentleman
3 from the mechanical department, we talked about Joe
4 Deely, Jay Commer, Mr. Oughton.

5 Any -- any other people that you recall
6 having discussions with, where the issue of race in the
7 workplace was -- was the subject?

8 A Yes.

9 Q Who?

10 A I had discussions with John Campbell. That's
11 who we're here talking about.

12 Q Okay.

13 A Specifically, John sought my help. He asked
14 me, you know, if -- if there was some racism going on,
15 and I told him in the affirmative. Yeah. I
16 personally, my personal belief was, yes.

17 And he asked me if I -- if I personally hated
18 him. You know. Because he said that, you know, he
19 just felt there was -- management was just down on him;
20 and I said "No, in fact, I like you." You know.

21 And he said, "Do others feel the same way?"

22 And I think I responded by saying, "John,
23 you're going to have to ask them the way you asked me.
24 I can't really answer for them."

25 But yeah, he was -- several times, you know,

1 he was pretty distraught about how he was being
2 treated. He sought me out several times. You know.

3 And he said, "Mark, you treat me decently,
4 and" -- and he said, "but I just keep feeling people
5 hate me, and I don't know what I've done to get people
6 to dislike me so bad."

7 Q Okay. Do you remember when it was that he
8 came to you and asked you whether or not you liked him?

9 A No. Not -- not specific time frames. I know
10 that there was a couple of little events that he was
11 involved in. One was a split switch, that he was on a
12 crew, and the other one was when he was with another
13 crew, and they shoved off the end of the fume track,
14 and there was some trouble that I had to handle with
15 him, and he was involved in it.

16 And then he was worried that he was going to
17 get fired or mistreated, and I assured him, as long as
18 I was around and I had anything to say about it, nobody
19 was going to get mistreated.

20 Q Okay.

21 A And the two events that I'm -- I don't -- I
22 don't really remember all of the specifics of it,
23 but --

24 Q And if you're about to go into the specifics
25 of those events, let's cover them sort of in an orderly

1 After he had had a hard night, we would try
2 to get to the bottom of it, and I was trying to
3 understand what was going on at night, too, because
4 that was my job. You know. I didn't want trouble. I
5 didn't want to get woke up in the middle of the night
6 either.

7 And he was trying to understand why he kept
8 having trouble, because we had another job that worked
9 at night, where there was no problem.

10 Q Okay. And with regard to the people that he
11 felt may have disliked him, have you identified those
12 people already?

13 A Yes.

14 Q Okay. So, if you remember now how we kind of
15 got to this point in the deposition, what we were doing
16 is going through that list of people that you had
17 discussions with where the discussion related to the
18 subject of race in the workplace, and we covered the
19 list that we developed earlier, and then we finally got
20 to Mr. Campbell.

21 Are there any other people that you can think
22 of where you had discussions about the subject of race
23 in the workplace?

24 A Yes.

25 Q Who?

1 A Lots of people.

2 Q Let's do this. Let's focus on people who
3 either had positions as, you know, lead on a team,
4 managers, or supervisors. Can you think of others?

5 A Cynthia Hubbard. She was -- she was a yard
6 conductor.

7 Q Okay. Who else?

8 A I had questions with the guy that -- his name
9 was Papa Doc, that was his nickname, but his name was
10 Richard Barrow; and then his son, many discussions with
11 Richard about the racism at work.

12 Another gentleman by the name of Kerry Hill,
13 who was an engineer. Kerry and I had lots and lots of
14 discussions about racism at work.

15 Mel Jackson, who is an experienced conductor
16 that's been around forever. He's probably the most
17 senior African American at work, and he said he'd seen
18 it all, and he was kind of philosophical.

19 I used to talk to Mel about it, because I
20 told him that I couldn't really understand it, and I
21 would ask his advice all the time, you know, to see --
22 because he seemed to have made peace with the situation
23 at work and been able to work through it.

24 But anyway, there was -- that's the primary
25 people --

1 Q Okay.

2 A -- that -- that were contemporaries of John
3 in the transportation part of it.

4 Q Okay.

5 A Nate Givens in the mechanical department, he
6 was a foreman in the mechanical department, and I had
7 lots of conversations with Nate, and -- and he is an
8 African American -- because he always felt that Lou and
9 Mike Fabian and Mike Bordenay and Jay and Joe were
10 putting him in a no-win situation, you know, and not --

11 And he was always -- he felt, as a foreman in
12 the coach yard, mechanical, he wasn't given his level
13 of respect that he had earned. Multiple times Nate had
14 talked to me about that.

15 Q Anyone else?

16 A I can't -- I can't think of, you know,
17 specifics, where I had like real poignant
18 conversations. These people I just mentioned, I had
19 some good heart-to-heart discussions about it.

20 Q Okay. Let's go to Cynthia Hubbard, and I
21 want to see if you can recall, in any of your
22 discussions with Cynthia, was there a particular event
23 that you recall occurring that led to a discussion with
24 Cynthia?

25 A Yes.

1 Q What do you remember?

2 A We had a male in express contract that
3 required a special switch engine at night, and I was
4 having real trouble managing everything, because I was
5 all by myself, managing the entire operation, so I
6 designated Cynthia as what they call a yard master,
7 made her a supervisor, and a guy by the name of Ron --
8 I can't think of Ron's last name. I can't believe I
9 just --

10 Q That's okay.

11 A Gruber, Ron Gruber. He's white, she's -- I
12 think she's Puerto Rican. I don't know.

13 But they were equal in authority, and I made
14 Ron work nights, and she worked days.

15 And she worked with the same people, and she
16 would come to me and said, you know, "How come Ron has
17 it so much easier and can get along with the bosses,
18 whereas they constantly pooh-pooh all my ideas? I
19 don't get any support from the bosses. They constantly
20 challenge everything that I got, and I'm getting picked
21 on here."

22 Q And who were the bosses?

23 A The same people we've mentioned.

24 Q Okay.

25 A And she wanted to know why she was being

1 treated different.

2 Q Okay.

3 A And she did a really good job. She did an
4 excellent job. And she eventually was fired because of
5 it, or let go.

6 Right after I -- right after I wasn't there
7 to support her, I had resigned, just, like, within a
8 week or two, they let her go, because -- but Ron
9 continued in his job.

10 Q Okay. Were you -- were you involved in
11 any -- in other words, in sort of a firsthand knowledge
12 kind of way, were you involved in any of the events
13 relating to Cynthia Hubbard where she felt she was
14 being criticized unfairly?

15 A Yes.

16 Q Were there a couple of them, a whole bunch of
17 them?

18 A Whole bunch of them.

19 Q Okay. Did you draw any conclusions that
20 someone was criticizing her unfairly based upon her
21 race?

22 A Well, yeah. Upon her race and the fact that
23 she was a woman.

24 You know, that was another thing that they
25 had to bring up all the time, is that, you know, she

1 was too emotional, she was hormonal; they'd say nasty
2 little stuff like that to discredit her and diminish
3 what she had to say.

4 Q What about with respect to Mr. Barrow? Were
5 there -- were there specific events that occurred that
6 led to your conversation with Mr. Barrow about
7 racial --

8 A Yes.

9 Q -- subjects?

10 Okay.

11 A Richard Barrow, we hired his son; in fact, I
12 hired his son as an engineer, and his son got in a
13 little trouble, which was not that big of a deal, and I
14 let him go. You know, I kind of, you know, said,
15 "Don't do that anymore." And his name is Richard, too.

16 And Tom Oughton came on and tried to fire
17 Papa Doc's son, and I jumped right in the middle of
18 that. It was another Tom Oughton thing, where Tom was
19 trying to fire the guy, the kid's son, and I was trying
20 to keep him working. You know.

21 And Richard -- you know, I can remember the
22 day he came in my office, very upset, you know, and was
23 asking why. Was it because it -- because of, you know,
24 him being black, them not liking his dad? You know,
25 what was Tom Oughton's problem with his son?

1 any?

2 A Yes.

3 Q Okay. What I'd like to do is, because with
4 union grievances there will be documents that will
5 reflect what occurred, at least partly --

6 A Yes.

7 Q -- what I'm wondering is, maybe, are there
8 others that occurred that there wouldn't necessarily be
9 records of?

10 A Right. Well, there's one. The big one is
11 that he was dating Laurette Lee, who is a white
12 conductor.

13 Q He, being Richard Barrow?

14 A Richard Barrow.

15 Q Senior?

16 A Senior.

17 And there was all kinds of nasty talk about
18 that, really, and it was upsetting the workplace, that
19 a black man was dating a white woman. All kinds of
20 stupid stuff like that.

21 And you know, he was sick of it, she was sick
22 of it. Their private lives were their own private
23 lives. People were talking about them constantly, and
24 it was upsetting to a lot of different people.

25 Q Who do you recall making statements about

1 Mr. Barrow and Ms. Lee?

2 A I never heard anybody personally. You know,
3 it was all hearsay, innuendo and stuff like that, and
4 whispering.

5 But nobody wanted to seem to -- why Richard
6 approached me was, no manager seemed to want to put
7 their foot down and come out on record and put a stop
8 to it.

9 So I -- I'm thinking -- you know, and this
10 is, you know, years later, I've reflected upon it, and
11 I think the reason he sought me out is, he thought that
12 he could get a fair shake from me, and he thought that
13 I was either reckless enough or not political enough to
14 where I would actually --

15 And I actually did. I actually, you know,
16 made it well known that, if I ever heard anything about
17 it, if anybody ever made anything, that we would take
18 care of it immediately, and -- whereas the other
19 managers, they didn't want to weigh into it.

20 Q Okay. What about with respect to Kerry Hill?
21 Was there any particular event that occurred that led
22 you into a discussion with Ms. Hill over race?

23 A Well, he's a guy.

24 Q Okay.

25 A It's a man.

1 And Kerry is a really, really good friend of
2 mine, and he doesn't work for Amtrak any longer. He
3 took a job with another company.

4 But he was very sensitive about race, and we
5 shared lots of things in common. You know. About --
6 talking about the stuff.

7 Q Can I ask you, is Mr. Hill African American?

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q Did he -- did he relate to you any particular
12 events that had occurred to him?

13 A Yes.

14 Q Okay. While he was working at Amtrak?

15 A Yes.

16 Q Can you tell me what you recall him telling
17 you?

18 A Well, he was -- he was -- foremost -- and I
19 think this is just off the top of my head again,
20 without taking a lot of thought -- but his main gripe
21 was -- and he did not really fault me for it, but he
22 was constantly pressuring me, or pressing for an
23 answer, which I couldn't give him -- why was I chosen
24 for a supervisor, whereas, you know, there is no -- he
25 was senior to me.

1 He's actually a better engineer, to tell you
2 the truth. More knowledgeable. You know, and I worked
3 as his assistant years before. Why wasn't he selected,
4 and why was I selected to be the boss?

5 And his comment was, "Why does, any time
6 there's a management decision, does the African
7 American get excluded from management?"

8 Because there wasn't any. There was none.
9 Joe Deely had never promoted an African American and --
10 over the -- those many years.

11 Q Let me -- if -- you know, let's start with
12 you personally. In order to get that promotion that
13 you just discussed into the management position, did
14 you have to file an application, bid on a job, anything
15 of that sort?

16 A No. He -- Joe Deely asked me --

17 Q Okay.

18 A -- to work for him as a manager.

19 Q Okay. Do you know if -- I mean, was there
20 a -- sort of a posted position?

21 A Yes.

22 Q Do you know if your friend, Mr. Hill,
23 actually applied for the position?

24 A Yes, I know that he did.

25 Q Okay. Was there an interview that had to

1 occur?

2 A I didn't get one.

3 Q You didn't get interviewed?

4 A No. They just put me right in. Just stuck
5 me right in.

6 Q Okay. Do you know if Mr. Hill was ever
7 interviewed?

8 A I don't know.

9 Q Okay. All right. What about with respect to
10 Mel Jackson? Was there a particular event, or --

11 MR. MOORE: Well, Mel Jackson? I thought it
12 was Milt Jackson.

13 THE WITNESS: Mel. M-E-L.

14 MR. MOORE: Okay.

15 Q (By Mr. Jones) With respect to Mel Jackson,
16 was there a particular event or events that led to your
17 discussion with Mr. Jackson about race?

18 A Yeah. Mel Jackson was the conductor on
19 Richard Barrow and Laurette Lee's train. He was the
20 conductor. She was the assistant. Richard was the
21 engineer when this was all hitting.

22 And since Mel was in charge of the train, and
23 he's -- I respect Mel, I went to him, you know, because
24 there was a lot of personalities. I went to him, and I
25 said, "How is this affecting your train?"

1 Q Let me stop you for just a brief second.

2 When you're saying "this," are you referring to the
3 fact that there are these sort of inappropriate
4 statements in the workplace about Mr. Barrow and
5 Ms. Lee?

6 A Yes.

7 Q Okay. Continue.

8 A So, he was a conductor.

9 So I said, "You know, Mel, you know, you're
10 out here every day with these two people and all this
11 controversy. You know. Is there something you see
12 that I can do? Is there -- is there something you know
13 that I don't know? Is there some advice you could give
14 me? You know, because you're here. You're in charge
15 on a day-to-day basis."

16 And so he talked to me. I can't remember all
17 of what he said. You know. I think -- I think the
18 feeling that he left me with is, just do the best you
19 can, and let go of the rest of it. You know, don't let
20 it canker your soul. I think that was an actual word
21 he used. "Don't let this bitterness and evil canker
22 your own soul. Just do the best you can, and let the
23 rest go."

24 Q Okay. Can you think of any other events that
25 occurred in the workplace while you were employed at

1 Amtrak that you believe were examples of mistreatment
2 of an employee based upon their race, that we haven't
3 covered yet?

4) A Yes. The thing that -- the main thing -- the
5 thing that disgusted me with Joe Deely, primarily, we
6 always had a Christmas party every year at
7 Christmastime, and we'd get a hotel room, and we'd sell
8 tickets, and all the employees would go, and I would
9 go, too, with my wife. We had it over in Emeryville.
10 I forget the name of the hotel.

11 But the last -- the last Christmas party I
12 went to -- I think it was 1998 or ninety-nine -- you
13 know, as a supervisor, you were expected to go and put
14 in an appearance; and it was a nice dinner, a nice
15 dinner, and dancing and music.

16 And Jay and Joe did not attend, and it had
17 been like, I think, the fourth year in a row that they
18 had not attended the Christmas party.

19 So I asked Joe shortly after the New Year,
20 you know, I told him, I said, "People have been talking
21 about the fact that you, you know, wouldn't even come
22 to the Christmas party and, you know, socialize in the
23 least bit with, you know, the employees, and, you know,
24 maybe rub elbows and eat dinner with us, and, you know,
25 act like a human being. You know. People are really

1 offended by that."

2 And he said, "I am not going to go out and
3 associate with those people" -- and he said "those
4 people" -- "on my own time, and listen to their music."

5 And I said, "Joe, what do you mean by that?"

6 He says, "Well, you know, it's all black,
7 it's an all black party, and they choose the music, and
8 they choose the location, and I'm just not going to
9 their party."

10 And that was the most outrageous thing that
11 he had ever said in my presence, and that's when I knew
12 that it wasn't just talk, and I knew that there was
13 something to what people were saying, because he
14 actually told me, man to man, face to face.

15 And what prompted it was because it was
16 causing so much dissension, you know, that he boycotted
17 the employee party.

18 And he told me he didn't want to go because
19 those people -- the majority of the employees were
20 black, and he wasn't going to go listen to rap music
21 and -- and associate with them on his own time.

22 He said, "At work I have to associate with
23 them, and -- but," he said, "on my own time, I'm not
24 going to."

25 Q Okay. I want to again just make sure I'm

1 way in this incident?

2 A Yeah. Lou was -- you know, Lou, before he
3 turned Nate loose, should have clued him in on how all
4 that worked.

5 Q Okay. But Nate wasn't complaining to you
6 about Mr. Bellotti, was he?

7 A Yes.

8 Q Okay. Explain that part of it to me.

9 A He was afraid that there were significant
10 portions of information that -- for example, how to
11 work with the switch crew -- that had been omitted
12 purposefully by his supervisors, and that that was a
13 form -- he was being set up to fail, and so he asked me
14 if there was any information I could give him that
15 could help him overcome that absence of information.

16 Q Okay. Did -- did you get involved in any
17 kind of investigation to find out if in fact he had
18 been a victim of some kind of a set-up?

19 A No. I had enough problems.

20 Q Understood. Okay.

21 Then you mentioned during the morning session
22 that, with respect to Mr. Campbell, there were a few
23 disciplinary events that occurred, and I believe you
24 mentioned something about a split switch --

25 A Right.

1 Q -- and then something about a fume track.

2 A Yeah. They went off the end of the fume
3 track.

4 Q Okay. Now, can you explain to me what you
5 mean when you say that there was a disciplinary event
6 with a split switch?

7 A Well, switches are rail, and they're rigid
8 switches in the coach yard, so if it was aligned
9 against you and you went through it anyway, you would
10 bend the rail up; just, you know, damage the switch and
11 render it unsafe and inoperable; and John Campbell's
12 job, and the whole crew's job, is to make sure that
13 those switches are aligned correctly for the train's
14 movement or the switch engine's movement.

15 The thing I remember about John Campbell
16 was -- is that, I forget what switch it was, but a
17 switch was split, a switch was damaged. The next
18 morning, I asked him what happened.

19 And my policy was, back then, is that if
20 somebody would just tell the truth and own up to it,
21 then we'd just deal with that person, and we didn't
22 have to go drag the entire crew in and be involved. If
23 somebody would just own up to the mistake, and they'd
24 take responsibility for what they did, then we didn't
25 have to investigate the whole crew.

1 And then my supervisor at the time was Ben
2 Barnes, and he got wind of it, and he pulled the whole
3 crew out of -- out of service pending an investigation
4 and a drug test.

5 And anyway, in -- two days later, after --
6 after the initial contact, the engineer, which was
7 Denny Carroll, who's a supervisor now at Amtrak, he
8 finally came forward and admitted to me that he had
9 fallen asleep briefly, and -- and ran through the
10 switch, and that it wasn't John's fault, or -- I can't
11 remember who the other person on the crew was.

12 That was it, and I think I just kicked John.
13 I don't think -- I don't think I did anything to John,
14 or there was any action taken against John.

15 The engineer took responsibility for it after
16 he thought about it for a couple of days, instead of
17 you know, telling the truth immediately, and --

18 And I put John right back to service. I
19 think. I don't -- and I don't even think I wrote it
20 up. But that --

21 And then the other time was --

22 Q Let's -- let's, before we go to that, was the
23 other time the fume track one?

24 A Yeah. That was the next event.

25 Q Let's get to that in a moment. I want to ask

1 you a few follow-up questions on the split switch.

2 What do you recall about your interaction
3 with Mr. Campbell over the split switch, when you went
4 to talk to him about it?

5 A I talked to each one as a crew. They all
6 three of them were there. And John didn't say
7 anything. You know.

8 Q Let me see if I'm understanding. When you
9 say --

10 A When I asked him what happened.

11 Q Were they all there as a group?

12 A They were all there as a group, and they
13 asked for union representation before they were
14 questioned, so I just stopped the interview, you know,
15 because -- to wait for their representative to get
16 there --

17 And I took them in for a drug test, and then,
18 when -- and then I really never got a chance to
19 interview anybody.

20 But then, before I got -- before I
21 interviewed them, the engineer came forward all by
22 himself, without John or -- I forget who the other guy
23 was -- and said, "Hey, I did it. You know. I'll tell
24 you -- I don't need my union guy with me," he says.
25 "I'll just tell you what happened."

1 Q Okay. Did it ever become evident to you that
2 Mr. Campbell knew about it, the split switch, but
3 didn't report it?

4 MR. MOORE: Object to the form of the
5 question.

6 THE WITNESS: No.

7 Q (By Mr. Jones) Okay. Do you know one way or
8 the other whether or not Mr. Campbell knew about the
9 split switch?

10 A Yeah, he knew about it.

11 Q Okay.

12 A The crew turned themselves in. I don't know
13 which member of the crew. They said, "Hey, we damaged
14 a switch. We had a boo-boo out here." I mean, we
15 didn't get into the nuts and bolts of it.

16 But that -- that triggered a mandatory drug
17 and alcohol test, and I took everybody to the clinic to
18 get --

19 Once they invoke -- once they said they
20 wanted their union representative, I was done with
21 them. I mean, I wasn't going to ask them any questions
22 without representation.

23 And then, you know, then the other thing is,
24 between the time that they get tested and we get the
25 results back, they're medically disqualified, meaning

1 that they can't work until we find out if they were,
2 you know, not under the influence.

3 And if they -- if they're clean, and they
4 weren't responsible, then the company pays them for the
5 time that they missed while those things are developed.

6 Q Okay. When did you first learn about the
7 split switch?

8 A When I came to work in the morning.

9 Q Okay. So is that when they first reported
10 it?

11 A No, they reported it to the mechanical
12 supervisor immediately.

13 Q And do you know that because they told you
14 they did so?

15 A No. I know that because the mechanical
16 supervisor, whomever that was, called me at home and
17 woke me up.

18 Q Do you remember who that was?

19 A No.

20 Q Do you remember what it was the mechanical
21 supervisor told you?

22 A Sure. Said that the switch crew had split a
23 switch.

24 And my job at that time was, you know, if
25 that happened, I was supposed to come down and, you

1 Q Did he indicate when it was that the crew
2 told him?

3 A I can't remember that. He probably did, but
4 I can't remember those kind of details now.

5 Q Okay. All right. Now, you indicated that
6 it's your recollection that Mr. Campbell wasn't
7 disciplined over this event.

8 A I didn't discipline him, because he wasn't
9 responsible. Somebody took responsibility. The only
10 thing I remember about that event is that, when Denny
11 Carroll came forward and said, "Hey, look, I did it,"
12 you know, "I'm the one, nobody else," you know, as soon
13 as I got the drug tests back from John Campbell and
14 whoever the other guy was, I put them right back to
15 work.

16 Q Okay.

17 A And I think I paid them, too, for their time
18 off.

19 Q Okay, then, with regard to this incident,
20 the split switch, was there anything at all that you
21 uncovered that led you to conclude that Mr. Campbell
22 was treated unfairly based upon his race?

23 A I did not even know he got disciplined for it
24 until much later. I thought -- I didn't even think we
25 were even -- I thought it was already taken care of,

1 and he wasn't disciplined about it.

2 I certainly didn't discipline him, and I was
3 his immediate supervisor, because he wasn't involved.
4 I -- I did not even count this as a disciplinary event
5 for John Campbell.

6 Q Okay. So you weren't involved in any
7 subsequent proceedings that may have led to discipline
8 on this event?

9 A I would have had to have initiated it, and
10 I'm telling you I didn't initiate any discipline.

11 Q Okay, but my question's a little different.
12 My question is, if there was some subsequent action
13 that -- that resulted in discipline to Mr. Campbell
14 over the split switch, it's not something you were
15 involved with?

16 MR. MOORE: Objection; assumes facts not in
17 evidence; and speculative.

18 THE WITNESS: No.

19 Q (By Mr. Jones) Did you have any discussions
20 with anyone about any disciplinary process that may
21 have occurred with Mr. Campbell over the split switch,
22 after the point in time where you concluded that you
23 yourself would not initiate discipline?

24 A No.

25 Q Now, did -- did this split switch, to your

1 recollection, occur in March of 2000? Would March 24
2 of the year 2000 be the time that this event occurred?

3 A That could be right.

4 Q Okay. Now, the next event that I want to
5 talk to you about is, I think, the one that you were
6 discussing that related to the fume track, and would
7 that be the event that occurred on January 10th, 2002?

8 A Probably.

9 Q Okay. I just want to read something to you,
10 and you tell me --

11 MR. MOORE: Well, if you're going to read it
12 to him, you need to identify it for the record and
13 enter it in the record.

14 MR. JONES: I don't necessarily have to --

15 MR. MOORE: It has to be an exhibit if you're
16 going to read it.

17 MR. JONES: I am going to read it.

18 MR. MOORE: You're not going to read it in
19 this deposition. How are you going to read it when we
20 don't know whether you're reading it right or not?

21 MR. JONES: You can state your objection.

22 MR. MOORE: You mean you're going to tell me
23 that you can refer to a document, you don't identify
24 it, and don't make it part of the record?

25 (The reporter asked counsel

1 And it was just only one wheel set of one
2 boxcar out on the pavement. It wasn't really a big
3 deal at all.

4 Q Okay. You mentioned the engineer's name was
5 Billy Burkett; is that right?

6 A Correct.

7 Q His race is what?

8 A White.

9 Q Okay. And you said you made a recommendation
10 that he be terminated? Was that --

11 A No. Disqualified from teaching the students.

12 Q Okay. I see.

13 A He had a student with him, and he failed to
14 properly demonstrate how to do that task.

15 Q Do you know if he was disqualified?

16 A He was.

17 Q Okay. Who had you made the recommendation
18 to?

19 A Jay Commer.

20 Q Okay. And when did your employment with
21 Amtrak end?

22 A January 10th, 2007.

23 Q Okay. Was there anything about the
24 termination of your employment that you believe was in
25 any way related to issues that you had previously

1 other. I don't know. Because that was that
2 transitional period. I don't know where he was
3 exactly, because it's been years ago.

4 Q Okay. And then do you have any -- any
5 knowledge one way or the other over -- regarding
6 whether or not Mr. Shelton was either on Mr. Campbell's
7 side in trying to get him promoted, or not?

8 A I have no idea.

9 Q Okay. Now, what about with respect to
10 Mr. Deely? How is it that you know Mr. Deely was
11 involved in the decisionmaking over the promotions that
12 Mr. Campbell requested?

13 A Mr. Deely either endorsed or vetoed whatever
14 the interview committee -- he was the last word on
15 whether somebody got hired or fired. That was where
16 the buck stopped.

17 Q Okay. Now, with regard to how the decisions
18 were reached when Mr. Campbell sought promotion to
19 engineer, do you know in particular what Mr. Deely was
20 contributing to that process?

21 A No.

22 Q Did Mr. Deely ever talk to you and give you
23 any indication as to how he went about making his
24 decisions regarding Mr. Campbell?

25 A No.

1 we were looking for.

2 Q Okay. Can you -- can you recall any
3 Caucasian employees who got promoted into the position
4 of engineer, who you thought shouldn't have been, due
5 to a safety record that was too egregious?

6 A Yes.

7 Q Okay. Who was that?

8 A I can't recall. There were several.

9 Q Okay. And what were, if you can recall, what
10 were the safety violations that you saw in their
11 history that led you to believe they should not have
12 been promoted?

13 A Mainly it was, mistakes were made, and
14 corrective action wasn't taken. The main name that
15 just jumped into my mind was John Lahadern, who had an
16 attendance --

17 Q Was that Lahadern?

18 A Lahadern. I can't remember how to spell
19 that. Probably how it sounds. He was the most
20 egregious one.

21 Q You said that was an attendance problem?

22 A Among other things.

23 Q What else do you -- what do you remember
24 about Mr. Lahadern?

25 A He was caught sleeping on the job several

1 times.

2 Q In what sense, sleeping on the job? First of
3 all, let's ask, what was his position?

4 A He was a train man.

5 Q And what was he doing that was a safety
6 violation?

7 A No safety glasses. No safety shoes. All the
8 mistakes that a junior guy can make. He had -- he had
9 to have been repeatedly instructed. Hard learner,
10 really difficult to train.

11 Q Do you remember ever, in Mr. Lahadern's
12 record, anything similar to a boxcar going off of a
13 fume track?

14 A Yeah. Rough couplings. You know. That
15 happens quite a bit.

16 Q Well --

17 A I don't know of any derailment. I don't know
18 that he put a car on the ground or anything like that.

19 Q Do you have a specific recollection that
20 there were hard couplings, or you're just assuming
21 there were?

22 A Assuming.

23 Q Okay.

24 A Everybody does when they first begin.
25 Everybody -- it takes a while to develop that skill.

1 Q Okay. What about cutting brake cylinders?
2 Do you know if Mr. Lahadern ever cut brake cylinders
3 out of --

4 A No, I have no firsthand knowledge of that.

5 Q Okay. And what about reporting a damaged
6 switch? Do you know if Mr. Lahadern ever had been
7 disciplined for failing to report a damaged switch?

8 A I don't know that either.

9 Q Okay. So what was it in particular about
10 Mr. Lahadern that you thought should have disqualified
11 him from being promoted to engineer?

12 A Well, first of all, it was his general
13 attitude and his professionalism, and the fact that I
14 had to repeatedly talk to him.

15 But he was Jay Commer's dad's friend, and I
16 was repeatedly told to let him keep going, let him keep
17 going, let him keep going.

18 In fact, I tried to disqualify him from
19 engine service entirely, and he was promoted anyway,
20 and -- with the result of, about two months later he
21 went through his second red signal, and they ultimately
22 had to terminate him, because he fell asleep. When he
23 woke up, he looked at the signal, looked at the wrong
24 one, and went through a red signal.

25 Q Okay. And got terminated for that?

1 five-minute break.

2 (A recess was taken at 3:30
3 p.m.; the deposition continued
4 at 3:38 p.m.)

5 MR. JONES: Back on the record.

6 Q (By Mr. Jones) All right, so we -- we
7 covered the employees who you could from memory today,
8 not having lists available to you, covered the
9 employees who were Caucasian and promoted to engineer
10 where you had concern; felt that perhaps they should
11 not have been.

12 A Uh-huh.

13 Q What I'd like to do now is look at sort of a
14 converse of that, and I know Mr. Campbell may be in
15 this group, but are there any African Americans that
16 you can recall who tried to get promoted to engineer,
17 who didn't make it, who you felt should have?

18 A John would be the primary one, because he
19 stands out as the most -- you know, he tried the
20 hardest.

21 The only other one I can think of is Frank
22 Caron, and they wouldn't hire him, and he went down to
23 San Jose to PCS, and he was hired down there, because
24 he couldn't get a break at Oakland.

25 Q Now, is Caron C-A-R-O-N?

1 A Yeah.

2 Q African American?

3 A I think mixed. You know, I don't know his
4 total ethnicity, but, you know, he's -- I think he's
5 got an African American father and a --

6 (A discussion was had off
7 the record.)

8 Q (By Mr. Jones) Okay. Now, with respect to
9 Mr. Caron, were you involved in any way --

10 A Yes.

11 Q Let me finish my question. I'm sure you've
12 completely predicted where it was going, but let's make
13 sure we have a clear record.

14 With respect to Mr. Caron, were you involved
15 in any way with the -- in the process that resulted in
16 the decision that Mr. Caron would not be promoted?

17 A Yes.

18 Q Okay. Can you explain to me what your
19 involvement was?

20 A I voted for him. I think it was a three-to-
21 two vote against him, and I was in the minority.

22 Q Who else voted for Mr. Caron?

23 A The -- the HRD, the personnel person, and
24 myself.

25 Q And then who voted against Mr. Caron?

1 A Mr. Shelton, Mr. Edson, and then Jay Commer.

2 Q And do you remember what the basis was for
3 their votes against him?

4 A They didn't -- Yeah. They said that he
5 wasn't smart enough to be an engineer.

6 Q Did they base that on anything in particular
7 that they revealed to you?

8 A They said they based it on his answers during
9 the interview.

10 Q Did they identify in particular any answers
11 to you?

12 A No.

13 Q Did you question them all about which answers
14 they felt were deficient?

15 A Yes.

16 Q What did you ask them?

17 A I asked them -- well, I -- it was -- it was
18 obvious that he was nervous, you know, and he was way
19 more articulate when he was calm, and he wanted the job
20 so bad that he kind of stumbled over his words and
21 things, and I asked them to make allowances for that.

22 And they said that being an engineer is a
23 stressful job, and maybe if he's under stress when he's
24 up on the engine, he couldn't handle it, he wasn't
25 smart enough to be able to, if he was stressed, to --

1 but I disagreed.

2 Q Okay. Was there anything about anything
3 Mr. Shelton said or did during that interview process
4 that led you to believe that his decision toward
5 Mr. Caron was racially motivated?

6 A Well, let me just say this. Steve Shelton
7 will go along with whomever is in power, what their
8 attitude is. He really doesn't have an opinion, or
9 will not state his own opinion, so whatever the
10 prevailing powerful person in the room -- Steve's not
11 the kind to take a stand on anything, so he didn't ever
12 say anything. He never stands up and says anything of
13 his own volition.

14 Q Okay.

15 A I've never known him to ever do that, in my
16 entire experience with him.

17 Q What about with respect to Mr. Edson? Was
18 there anything that Mr. Edson said or did that led you
19 to believe that his decision toward Mr. Caron was
20 racially motivated?

21 A No.

22 Q And then with respect to Mr. Commer, Jay
23 Commer, was there anything he said or did in the
24 interview process that led you to conclude that his
25 decision toward Mr. Caron was racially motivated?

1 Q Okay. Keeping in mind the safety violations
2 that you were aware of that related to Mr. Campbell, do
3 you know anyone who got promoted to the engineer
4 position who had a similar set of safety violations?

5 A Yeah.

6 Q Who?

7 A I don't know specifically, but there's --
8 there's several that had rookie mistakes like John
9 made. A couple rookie, or one rookie mistake that I
10 can think of, that really wasn't disqualifying.

11 Q Okay. And I think you've given me all of the
12 examples of people whose names you recall where the
13 one-year rule was waived; is that right?

14 A I don't know all of them --

15 Q Right.

16 A -- but I've given you my best recollection.

17 Q And I think you had one gentleman by the name
18 of Tony --

19 A Onisko.

20 Q -- Onisko. Were there any others that you're
21 aware of?

22 A Probably, but I don't recall off the top of
23 my head right now.

24 Q Okay. And then are you aware of any
25 Caucasian employees who had safety violations that were

1 similar to Mr. Campbell's, including the event that you
2 heard about in July of 2004, who were not terminated?

3 A Yes.

4 Q And who would that be?

5 A My last student before I left Amtrak, Rick --
6 I forget Rick's last name. Edwards, Rick Edwards.

7 Q What safety violations with Rick were you
8 aware of?

9 A He was an electrician, and he was accused of
10 falsifying some testing and not doing his work, and he
11 was promoted anyway.

12 Q Was that the only issue with Mr. Edwards that
13 you're aware of?

14 A No. That's -- that's the most -- Well, yeah.
15 Yeah. He had all kinds of managerial -- he had
16 problems with management. But he was promoted away
17 instead of terminated.

18 Q What position was he promoted to?

19 A Locomotive engineer. And he did not have a
20 year's service, even as an electrician with the
21 company.

22 Q When did that occur? Do you know?

23 A Last year sometime. And I'm so conversant
24 with it because I just was training him in December.

25 It wasn't very long ago that I was training him, and he

1 was hard to train because he didn't have very much
2 experience.

3 Q Okay. Who was involved in the decision to
4 promote him?

5 A He told me Steve Shelton was. Lou Bellotti.

6 Q So now when you say locomotive engineer,
7 that's the same position that Mr. Campbell was applying
8 for?

9 A Yes.

10 Q Now, you said he was -- he was accused of
11 false testing. Do you know whether or not the
12 accusation of false testing resulted in an
13 investigation?

14 A It did.

15 Q And do you know if it resulted in a
16 determination that the accusation was true?

17 A It was upheld, yes.

18 Q Okay. Do you know what kind of testing it
19 was?

20 A Sure.

21 Q What was it?

22 A It was testing the electrical circuit for the
23 head end power.

24 Q I'm sorry, could you say what kind of power
25 that was?

1 service.

2 Q Okay. Was there any other source of
3 information about the accusation that was made against
4 Mr. Edwards, other than Mr. Edwards himself and Rick
5 O'Shea?

6 A Pat O'Shea.

7 Q Pat O'Shea.

8 A No.

9 MR. JONES: Okay. All right. That's it.
10 Those are -- those are all my questions for the time
11 being.

12 MR. MOORE: Thank you.

13 I have some questions, sir.

14 --o0o--

15 EXAMINATION BY MR. MOORE

16
17 Q With respect to the split switch incident,
18 when did that occur?

19 A Sometime in the early morning.

20 Q I mean, what year?

21 A I think it was, like, ninety-nine or 2000,
22 something like that.

23 Q Could you tell us -- explain for us, rather,
24 I should ask you -- could you describe the promotional
25 process that existed at Amtrak at the time you were

1 working there?

2 MR. JONES: Vague and ambiguous; overbroad.

3 MR. MOORE: You can answer.

4 THE WITNESS: The selection process was,
5 people that wanted to be locomotive engineers had to
6 be -- the policy back then was, you had to be in train
7 service for a year, but that was always violated, and
8 there had to be a fairly good record. It didn't have
9 to be perfect, but it had to be a pretty good record.
10 Nothing major on your record, to be considered for
11 engine service.

12 And once you're -- a pool of candidates was
13 put in to personnel and personnel would weed that down
14 to eligible candidates, those eligible candidates were
15 given to an interviewing committee. The interviewing
16 committee asked them standardized questions.

17 After the interview was concluded, the
18 interviewing committee members would vote, and the
19 majority of those people in favor of a candidate would
20 pass the candidate on to Mr. Deely at that time, who
21 was the division superintendent, and he would accept or
22 reject those candidates from the interviewing officers.

23 And that's how it was done.

24 Q (By Mr. Moore) So the final decisionmaking
25 was -- the final decisionmaker with respect to

1 promotions was Mr. Deely?

2 A Absolutely.

3 Q All right. And how was the interview
4 committee selected, if you know?

5 A One person was from the personnel department,
6 one or two candidates, either the supervisor, immediate
7 supervisor, and another member of management, and a
8 member of the union organization that represented the
9 engineers was invited. There was between four and five
10 members on the committee. Sometimes as low as three.
11 But always an odd number.

12 Q Now, was it your understanding that the
13 process would involve the employee's immediate
14 supervisor being on the committee?

15 A Yes.

16 Q And at what period of time was that the
17 process with respect to the formation of the
18 interviewing committee?

19 A At what time?

20 Q Yes. I mean, in terms of years.

21 A That's standard still today in the personnel
22 procedures manual. That's -- that's a -- the stated
23 policy in the personnel manual.

24 Q And during the time from 2000 -- from 1999 up
25 until 2002, now, you were Mr. Campbell's immediate

1 Q What was his response?

2 A He said, "Thank you for your time."

3 Q And that was the end of that?

4 A Yes. I was dismissed.

5 Q Do you know of any other employees who were
6 promoted -- who came before interviewing committees in
7 which their immediate supervisor did not take part?

8 MR. JONES: Objection; overbroad; lacks
9 foundation.

10 THE WITNESS: I'm sure there was other
11 instances. I don't know.

12 Q (By Mr. Moore) You indicated earlier in your
13 testimony that, if you were given some names, it might
14 refresh your recollection as to the employees who were
15 promoted to engineer positions but who had safety
16 violations. Do you recall that?

17 A Yes.

18 Q I've been made to understand that the
19 following persons that I'm -- whose names I'm going to
20 call out at this time were promoted in the year 2000,
21 and I ask you to listen and see if it refreshes your
22 recollection as to whether or not any of them had
23 safety violations.

24 A Okay.

25 Q E. A. Ohman, O-H-M-A-N?

1 A Yes, I know her.

2 Q Do you know whether or not she had safety
3 violations?

4 A She had a really major one.

5 Q And what was that?

6 A She was working for the Union Pacific
7 Railroad, and she went through a red signal, and she
8 occupied main track without authority.

9 Q What is a red signal?

10 A Stop signal.

11 Q And what does that mean, to occupy main track
12 without authority?

13 A If you occupy a main track without authority,
14 you violate that space, and the implication and the
15 meaning is that, two trains cannot occupy the same
16 space at the same time, so only one train is allowed in
17 that space.

18 So what she did is, she went into an -- onto
19 a track where she did not have authorization. That
20 could have resulted in a collision, because there might
21 have been another train in there.

22 Q And the purpose of that rule is to prevent
23 train collisions?

24 A Yes.

25 Q S. L. McLauchlin, M-C-L-A-U-C-H-L-I-N?

1 A The safety concern was, is that he couldn't

2 climb ladders and he couldn't -- and that was the
3 safety consideration, but we felt that it wasn't valid.

4 Q You would agree that reasonable people may
5 have reached a different conclusion with respect to him
6 because of this ADA problem?

7 A Yes.

8 Q J. R. Kyles, K-Y-L-E-S?

9 A Josh Kyles.

10 Q And do you know whether or not Mr. Kyles had
11 any major safety violations?

12 MR. JONES: Lacks foundation.

13 THE WITNESS: He did.

14 MR. MOORE: Go right ahead.

15 THE WITNESS: He did. He had several hard
16 couplings in the yard that he was involved with when I
17 was a supervisor.

18 I am aware of, and I know Josh real well,
19 because his father and my father are good friends and
20 I've been a friend of his family for a long time, and
21 he had trouble.

22 I don't remember all the specifics, but there
23 were several safety things that he needed help with
24 before he was allowed to be an engineer.

25 Q (By Mr. Moore) And you say he'd had two hard

1 couplings?

2 A At least.

3 Q Okay. And you explained to us this morning
4 what a hard coupling is; is that correct?

5 A That's correct.

6 Q And when you reference him as having had hard
7 couplings, you're referring to the same type of
8 incident?

9 A Yeah. Over four-mile-an-hour couplings.

10 Q All right. G. B. Santos, S-A-N-T-O-S?

11 A Greg Santos.

12 Q Yes. Do you know Santos?

13 A Yes, I do.

14 Q Did he have any major violations?

15 A Yes, he --

16 MR. JONES: Lacks foundation.

17 THE WITNESS: Yes, he did.

18 Q (By Mr. Moore) And what were they?

19 A He violated restricted speed on the Wisconsin
20 Central Railroad as a conductor before we hired him;
21 however, some time had gone by, and he had taken some
22 corrective action, and we felt sure that -- it was a
23 very serious safety violation, but he had grown from
24 that, and he probably wouldn't repeat it.

25 Q And what is restricted speed?

1 A Restricted speed means the speed slow enough
2 to stop half the range of vision.

3 It means that you're in a track where
4 anything could happen, and so you go at a speed not to
5 exceed twenty miles an hour, where you can see what
6 you're doing and you can -- you're at a speed that you
7 can stop at any time you call for a stop.

8 And he was caught doing thirty-five miles an
9 hour, way, way, in excess, and it was on his record
10 when we hired him, but it had been two or three years
11 before, and he'd had a good record ever since.

12 Q All right.

13 A And we felt that he had learned his lesson,
14 and we still promoted him anyway.

15 Q All right. B. Wilson?

16 A Brian Wilson.

17 Q Yes.

18 A Caucasian.

19 Q Do you know whether or not he had any major
20 safety violations?

21 MR. JONES: Objection; lacks foundation.

22 MR. MOORE: You may answer.

23 THE WITNESS: He did.

24 Q (By Mr. Moore) And what were they?

25 A He put a car on the ground over on -- in what

1 we call the Oakland terminal, OTR, at the shed.

2 Q And what do you mean by, "put a car on the
3 ground"?

4 A He shoved off the end of a track.

5 Q So the car was completely off the track?

6 A Just one -- one set of one wheels. He caught
7 it real quick.

8 Q And he was promoted?

9 A Absolutely.

10 Q Do you know of any other persons -- Strike
11 that.

12 Do you know of any other safety violations
13 that Mr. Wilson may have had?

14 MR. JONES: Lacks foundation.

15 THE WITNESS: Yes, but I don't recall the
16 specific type and --

17 Q (By Mr. Moore) All right. I'm going to go
18 to the year 2001, and I have been given the name of J.
19 Waterhouse. Are you familiar with that name?

20 A Yeah. John Waterhouse. Sure.

21 Q And he's Caucasian?

22 A Yes.

23 Q Do you know whether or not he had any major
24 safety violations?

25 MR. JONES: Lacks foundation.

1 THE WITNESS: He had.

2 Q (By Mr. Moore) And would you tell us what
3 they were?

4 A He was working for Union Pacific, and he had
5 a speeding violation that had happened when he was a
6 probationary engineer.

7 However, we hired him, and we -- it was my
8 job to evaluate his performance, and after a certain
9 length of time, after several evaluations, it was clear
10 to me that he was a good engineer, and that he had had
11 an unfortunate incident, you know, in the beginning and
12 he had learned from that, and it made him a better
13 engineer because of it.

14 Q R. Ward, W-A-R-D?

15 A Robert Ward.

16 MR. MOORE: Yes.

17 MR. JONES: Is the question at this point,
18 does he have any safety violations?

19 MR. MOORE: That's going to be the question,
20 yes.

21 MR. JONES: Okay. I'm --

22 MR. MOORE: My question is whether he was
23 Caucasian. That's the next question.

24 THE WITNESS: Did he have safety violations?

25 Q (By Mr. Moore) No. My next question is, is

1 he Caucasian?

2 A Yes.

3 Q And did he have a major safety violation?

4 A Yes.

5 MR. JONES: Lacks foundation; move to strike
6 to interpose the objection that it lacks foundation.

7 Could I ask you, just on --

8 MR. MOORE: No, no. I'm asking questions
9 now.

10 MR. JONES: No, no, I'm going to ask him to
11 give me a moment in between the question and answer to
12 give me a space in time to object if I need to.

13 MR. MOORE: All right. You can object. I'm
14 sure you have your opportunity to object.

15 Q (By Mr. Moore) Did we have an answer to the
16 question of whether he had major safety violations?

17 A Yes.

18 MR. JONES: Same objection.

19 Q (By Mr. Moore) Okay. And what was it?

20 A He ran through a switch over at Schnitzer
21 Steel, which was the training facility that we were
22 using.

23 Q And what does that mean, he ran through a
24 switch?

25 A Same thing that Mr. Campbell was accused of.

1 He went through the switch. It was bent for -- the
2 other direction, and he went through it and bent the
3 rail up.

4 Q And what does that mean, when the rail is
5 bent up?

6 A Well, you know, somebody has to come out and
7 fix it, and it costs money and time.

8 But in that case, the track was very weedy,
9 and there was garbage all over it, and it was
10 nighttime, and I was the person that made the judgment
11 on it that, you know, a new guy, in the middle of the
12 night, had a really, you know, overgrown track.

13 There was extenuating circumstances, and I
14 didn't hold it against him. It was a good learning
15 experience for Robert.

16 Q Okay. C. M. Skinner, S-K-I-N-N-E-R?

17 A Chad Skinner.

18 Q Yes. Is he Caucasian?

19 A Yes.

20 Q And do you know whether or not he had any
21 major safety violations?

22 MR. JONES: Lacks foundation.

23 MR. MOORE: You may answer.

24 THE WITNESS: Yes.

25 Q (By Mr. Moore) And what were his violations?

1 A He had -- I think it was, he forgot to tie
2 the brakes on a cut of cars that he left standing in
3 the coach yard, and he was counseled.

4 And subsequently I investigated that, more
5 than one time over a period of time, and never found
6 him to ever leave brakes off the cars again.

7 And that was a good learning experience,
8 something that he never repeated, and so he qualified
9 for engine service.

10 Q What is -- what does that mean, forgetting to
11 tie the brakes?

12 A There's a hand brake on each and every car,
13 and when you leave them alone without being attached to
14 a train, it's got to stay secure in one place, and you
15 need to tie a brake, a manual brake on the car, as well
16 as rely on the automatic brakes.

17 You don't ever rely on the automatic brakes
18 to hold a car. You make sure it's cinched down with
19 the chain.

20 And whenever you leave a car somewhere, you
21 cinch it down to make sure it's secure and won't roll
22 around.

23 Q All right. K. Powell? Do you -- are you
24 familiar with that name?

25 A Yes.

1 Q And is that a male or female?

2 A Male.

3 Q And is he Caucasian?

4 A Caucasian.

5 Q Do you know whether or not he had any major
6 safety violations?

7 A Several.

8 MR. JONES: Objection; lacks foundation.

9 Q (By Mr. Moore) And what were they?

10 A Several. He ran into another train with
11 his -- with his cut of cars.

12 Q Was that the only violation?

13 A I don't know if it was the only one, but it's
14 the one that stands out in my mind.

15 Q Okay. So he actually collided with a train?

16 A Yes, he did.

17 MR. JONES: Asked and answered.

18 Q (By Mr. Moore) Is that correct?

19 A Yes.

20 Q And he was promoted to -- to engineer?

21 A Yes.

22 Q Do you recognize the name of T. Evans?

23 A No.

24 Q W. Giddings, G-I-D-D-I-N-G-S?

25 A Wayne Giddings, yes.

FURTHER EXAMINATION BY MR. JONES

Q You made a statement in response to a question from Mr. Moore that Mr. Deely was the person who made the final decisions on promotions.

A Yes.

Q How is it you know that Mr. Deely was the person who made the final decision?

A That was policy. That's the only way people were -- there's the -- a 2000; there's the form that Amtrak uses. It's a personnel requisition form, and no 2000 forms were ever submitted unless they went through Juanita McCumson, who was Deely's secretary.

Deely had to see every single personnel action request, and I don't know if John's personally, but every single one had to come through Joe's office before it was handed off and approved.

You may sign it, but it had to go to Joe before it was sent to personnel to take any kind of personnel action request, whatever that was, in any department.

Q Okay. But do you -- do you know what Mr. Deely actually did with these personnel action forms when they came through his office?

A I don't know what he actually did, but what

1 he was supposed to do, what I was told he did, was
2 approve or disapprove each and every one.

3 Because I had made some personnel action
4 requests, sent them to him, that he told me not to put
5 through, or to modify in some way, or --

6 Over the years, he was the person that made
7 all personnel decisions in the district, period.

8 Q Okay. What I'm trying to find out, though,
9 is your knowledge of what in fact Mr. Deely did.
10 You're telling me that he was the guy who made these
11 final decisions, and I'm trying to find out the basis
12 of your knowledge, and you've told me some of it.

13 My understanding is, personnel action forms
14 went to his office and got funneled at least to --
15 initially to a woman who worked with Mr. Deely; is
16 that right?

17 A Yes. Juanita McCumson. She was his personal
18 secretary.

19 Q All right. And she would take those and give
20 them to Mr. Deely?

21 A Yeah. She would -- Mr. Deely had to approve
22 each and every personnel action request, or disapprove
23 of it.

24 Q But do you know if she actually gave them to
25 Mr. Deely?

1 A Yes.

2 Q Did you witness any of them?

3 A No.

4 Q Did you become aware of them based upon
5 information that others told you about?

6 A And my own personal investigation.

7 Q Okay. When you talk about your own personal
8 investigation, does a hard coupling leave physical
9 evidence?

10 A Yes.

11 Q Okay. And do you remember at about what
12 point in time in Mr. Kyle's career with Amtrak the hard
13 couplings occurred?

14 A When he was brand new.

15 Q Okay. And how long after that was he
16 promoted to engineer, finally?

17 A Less than a year.

18 Q Less than a year after the hard couplings?

19 A Yes.

20 Q Okay. And were the hard couplings the only
21 event that you can recall with Mr. Kyles?

22 A At this point, it's the only ones I can
23 recall.

24 Q Okay. With regard to G. B. Santos, you
25 indicated that there was a violation of restricted

1 speed on the Wisconsin Central.

2 A Southern.

3 Q The Wisconsin Southern?

4 A Right.

5 Q Okay. And is the Wisconsin Southern a
6 railroad other than Amtrak?

7 A Yes.

8 Q Okay. So you have no firsthand knowledge
9 about that event, do you?

10 A Just what I read in his personnel file, and
11 what he explained to me during the interview.

12 Q Okay. With regard -- and -- oh, was he an
13 engineer already when he came to Amtrak?

14 A No.

15 Q Did he have any other major safety violations
16 at Amtrak prior to his promotion to engineer?

17 A No.

18 Q Then there was a B. Wilson, who you indicated
19 put a car on the ground in Oakland. Did you learn
20 about that through -- through your investigation?

21 A Yes.

22 Q And was there physical evidence that --

23 A Sure.

24 Q And then you spoke to Mr. Wilson?

25 A Sure.

1 Q Now, when in his career did that event occur?

2 A Oh, just a few months before he was
3 considered for engine service.

4 Q Okay. And then a few months after he was --
5 well, a few months after this incident in Oakland, was
6 he then promoted?

7 A Yes.

8 Q And was that the only major safety violation
9 that you recall with him?

10 A Yes.

11 Q With regard to John Waterhouse, you indicated
12 that there was an incident that occurred while he was
13 working for the Union Pacific.

14 A Yes.

15 Q So is that something that you learned from
16 Mr. Waterhouse?

17 A And his personnel record.

18 Q Okay. But no firsthand knowledge of the
19 incident?

20 A No.

21 Q And when he came to Amtrak, was he already
22 working for Union Pacific as an engineer?

23 A Yes.

24 Q Was he hired directly into the engineer's
25 position?

1 A Yes.

2 Q You mentioned that an R. Ward --

3 A Robert Ward.

4 Q -- Robert Ward ran through a switch at -- I
5 think you said Switzer?

6 A Schnitzer.

7 Q -- Schnitzer Steel, and is that something he
8 did while he was with Amtrak?

9 A Yes.

10 Q And was he already an engineer?

11 A No.

12 Q How long before he was promoted to engineer
13 do you recall that occurring?

14 A Just a couple of months.

15 Q You mentioned there was -- backing up to
16 Robert Ward for a second, did you consider Mr. Ward's
17 mistake to be a major violation?

18 A No.

19 Q With regard to C. M. Skinner --

20 A Yes.

21 Q -- you indicated that he had forgotten to tie
22 brakes; is that right?

23 A Yes.

24 Q And is that something that he forgot to do
25 while he was employed with Amtrak?

1 A Yes.

2 Q How far in advance of his promotion to
3 engineer did that event occur?

4 A Just one or two months.

5 Q And how is it you know about the events with
6 Mr. Skinner?

7 A I caught him, in an efficiency test.

8 Q Okay. So you were observing his work, and
9 you noticed that he hadn't tied the brakes?

10 A Yes.

11 Q Okay. And what about with Mr. -- with
12 Mr. Schnitzer, you actually investigated the bent rail;
13 is that right?

14 A No. Not Mr. Schnitzer. It's Schnitzer
15 Steel. It's Mr. Ward.

16 Q Thanks. Mr. Ward.

17 A Yes.

18 Mr. Ward, I went over and saw the conditions,
19 and it was so extenuating that it was nothing to talk
20 to him about. It was hardly his fault.

21 Q Okay.

22 A But a more experienced person wouldn't --
23 would have cleared the brush and stuff, and not made
24 those assumptions that a new person would.

25 Q Okay. Then was it Mr. Skinner who you had

1 indicated had hit a train?

2 A No.

3 Q Who was that?

4 A That was Kenny Powell. P-O-W-E-L-L.

5 Q And did that occur while he was employed with
6 Amtrak?

7 A Yes.

8 Q And did it occur before or after he was an
9 engineer?

10 A Before.

11 Q How far in advance of his promotion to --

12 A Maybe six months. And it was at the Oakland
13 diesel shop. It was a sideswipe.

14 Q Can you explain what that all means to me?
15 How do you hit a train in a sideswipe?

16 A Well, there was a -- there was -- it's called
17 the short -- short way, and there was a train, and it
18 was out to foul.

19 It was coming into the diesel shop, and
20 instead of stopping short and waiting, or making sure
21 that there was an adequate distance for the two pieces
22 of equipment to clear, they scraped sides as they went
23 by each other.

24 Q Then, with respect to T. Evans, you didn't
25 recall any events?

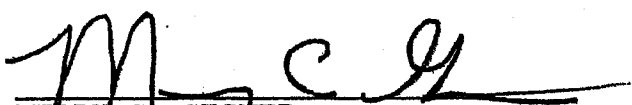
REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition,

MARK CARL SCHULTHIES,
was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled case; that said deposition was taken at the time and place named herein; that the testimony of said witness was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed under my direction into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the case named in said caption.

Dated March 27, 2007.


MERRY C. GESNER
Certified Shorthand Reporter
State of California
Certificate No. 8819